

CABINET

8 FEBRUARY 2022

FUTURE HIGH STREET FUND (FHSF) – PROPERTY ACQUISITION / COMPULSORY PURCHASE

Portfolio holders: Councillor Alan Jarrett, Leader of the Council
Councillor Rodney Chambers OBE, Portfolio Holder for Inward Investment, Strategic Regeneration and Partnerships
Councillor Jane Chitty, Portfolio Holder for Planning, Economic Growth and Regulation
Councillor Adrian Gulvin, Portfolio Holder for Resources

Report from: Richard Hicks, Director of Place and Deputy Chief Executive

Author: Richard Carden, Senior Regeneration & Project Manager

Summary

This report seeks Cabinet approval to delegate authority to the Director of Place and Deputy Chief Executive in consultation with the Leader and Portfolio Holder for Resources to acquire property in Chatham Town Centre, specifically the former Debenhams Store by way of Compulsory Purchase Order (CPO), using Future High Street Fund (FHSF) money on the best terms reasonably obtainable.

1. Budget and policy framework
 - 1.1 The responsibility for the decision on acquiring property and making of a Compulsory Purchase Order is a matter for Cabinet.
 - 1.2 The Future High Street Fund (FHSF) has allocated £9.5m for various improvements and delivery of improvements, space and buildings around Chatham High Street.
 - 1.3 As part of the allocation, some funds have been set aside to acquire buildings within Chatham High Street, including the former Debenhams Store, however, negotiations with the owners of the Debenhams building, have not been successful to date and compulsory purchase of the building may be required.
 - 1.4 The making of a Compulsory Purchase Order is a matter for Cabinet, as is any compensation payable.

2. Background

- 2.1 In August 2021, Cabinet recommended that the Future High Street Fund (FHSF) (£9.5m) money be added to the Capital Programme. Furthermore, Cabinet recommended that delegated authority be given to the Director of Place and Deputy Chief Executive, in consultation with the Leader and Portfolio Holder for Resources, to acquire property in Chatham Town Centre, using FHSF money on the best terms reasonably obtainable and to dispose of or let on the best terms reasonably obtainable, any property acquired or that has had works undertaken using FHSF money, to Medway Development Company or others to enable the sites to be developed, sold and / or let.
- 2.2 Attempts to negotiate with the owners of the former Debenhams, have to date, been unsuccessful. The Council had a valuation undertaken in July 2021 which valued the property at the amount stated in the exempt appendix to this report. An offer was made to the owners based on this valuation; however, we are yet to receive a formal response. Further discussions led to a deadline being set for the end of November for the owners to respond, at the time of writing, no response has been forthcoming. Officers then used the possibility of utilising CPO as an incentive in negotiations, prior to the November deadline, this also did not generate a formal response. Officers now request authority to acquire the property by way of Compulsory Purchase, should agreement not be reached to acquire the property on reasonable terms.

3. Options

- 3.1 Option 1 - Do Nothing – This option will not bring the former Debenhams into use for the foreseeable future and would rely on the existing owners to wait until they felt the market was sufficiently buoyant, before proceeding with any sort of scheme.
- 3.2 Option 2 - To agree the recommendations within this report, which will result in a much improved quality of building in Chatham Town Centre providing a mix of residential and commercial opportunities.

4. Advice and analysis

- 4.1 Compulsory purchase is often described as a draconian measure, as it involves an owner being forced to part with land or buildings, against their will and is only appropriate in circumstances where the public interest outweighs the rights of the owners.
- 4.2 Without prejudicing any future legal process, the prominence of the building in the Council's chosen city centre and the impact it has on the wider street scape, make it of such significance in seeking to regenerate Chatham, officers advise that if a negotiated purchase of the building is not possible a CPO should be pursued.

Planning policy support

- 4.3 Chatham Waterfront is one of several major regeneration projects in Chatham Town Centre and the wider Medway area, which will enhance the character and the economic fortune of the sub-region and contribute to the wider regeneration of the Thames Gateway. Regeneration projects include the Chatham place-making project linking the train station to Chatham High Street, redevelopment of key sites in and on the edge of the town centre and the Command of the Heights project, which extends down to the waterfront. The Debenhams site is therefore a part of a wider programme of projects including those being delivered as part of the FHSF projects.
- 4.4 The Chatham Centre and Waterfront Development Framework 2004 and the Chatham Centre and Waterfront Development Brief 2008 Supplementary Planning Guidance promote unlocking potential at the site and encourage development to boost Medway's economy and deliver opportunities for further investment. The policy context has been updated through the Chatham Town Centre Masterplan, 2019, which promotes opportunities for a vibrant city centre, bringing in new uses through redevelopment. This is a key evidence base document for the new Local Plan.
- 4.5 The National Planning Policy Framework (NPPF) promotes sustainable development, including ensuring that there is sufficient land available in the right places and at the right times to support growth and innovation.
- 4.6 The Council has also been awarded Future High Street Funding to assist towards the redevelopment of the site.

5. Risk management

Risk	Description	Action to avoid or mitigate risk
Decisions about development of the Former Debenhams are not consistent with emerging or current policy.	Inconsistent regeneration	Consider the emerging Masterplan for Chatham and take specialist advice about the use of the overall site.
The owners remain unprepared to sell the former Debenhams Store	The building remains empty and has a negative impact on the regeneration of Chatham	Continue to seek a negotiated acquisition, and in tandem commence CPO proceedings.
CPO proceedings are opposed	There is a risk the CPO will not be granted	Seek appropriate specialist support to put the Council's case for a CPO in the strongest possible terms.

6. Financial implications

- 6.1 The Council will need to bear the costs of preparing a compulsory purchase order and then submitting it to the Secretary of State for confirmation.
- 6.2 The Council will also have to bear the costs of taking steps to secure the confirmation of the compulsory purchase order, which could include the costs of preparing for and attending a public inquiry.
- 6.3 The Council will need to cover compensation costs for acquisition of the building together with legal and surveyor's costs and stamp duty land tax.
- 6.4 If agreement cannot be reached and the Council decides to use a compulsory purchase order to acquire the building, then the Council will need to pay for the costs of obtaining the compulsory purchase order and for any land compensation and professional fees etc
- 6.5 The Council will need to also bear in mind there is a risk that the costs of objectors to the compulsory purchase order will have to be borne by the Council if the order is not confirmed.
- 6.6 The cost of obtaining a CPO is estimated at the figure as set out in the exempt appendix.
- 6.7 All the above costs have already been added to the Capital Programme as part of the funding allocation from MHCLG. A total of the amount as set out in the appendix has been allocated to the acquisition of the former Debenhams, it is expected that the total costs of the Compulsory Purchase can be met within this budget.

7 . Legal Implications

- 7.1 The Council has powers under Section 226 (1)(a) of the Town and Country Planning Act 1990 (Act) to acquire land compulsorily if it considers that the acquisition will facilitate the carrying out of development, redevelopment or improvement of the site. Under section 226(1A) of the Town and Country Planning Act 1990, such powers may only be exercised by the Council if the Council considers that such development, re-development or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area.

Further Guidance on Compulsory Purchase Orders

- 7.2 In promoting a compulsory purchase order, acquiring authorities should have regard to government guidance, and the relevant government guidance is now the guidance which was issued in October 2015 from DCLG.

7.3 Matters which must be addressed are:

- (i) There must be a compelling case in the public interest – as to which see below;
- (ii) Authorities should have taken reasonable steps to acquire the interests by negotiation, where practicable. A compulsory purchase order is intended as a last resort in the event that attempts to acquire by agreement fail. Negotiations with third parties have taken place and largely been successful. Officers are satisfied that they have carried out sufficient steps to meet this criterion.
- (iii) There must be a clear idea of how the Council intends to use the building and that the necessary resources are likely to be available to achieve that end within a reasonable timescale. The building has the benefit of a high-level scheme for 76 residential units and over 1,000 square metres of commercial space. This scheme needs to be developed further prior to a permitted development application under planning for part new build, part conversion of the existing building.
- (iv) Full details for the source of, and timing for, the funding of the scheme are required –the Council already has funding to cover the compensation necessary to acquire the building, via the FHSF allocation.

7.4 On the basis of the assessment carried out by the Council it must consider that a compelling case exists before a decision is made. Officers have carried out this assessment and as a result of the unlocking of the redevelopment of a key disused building in the centre of Chatham, which will bring employment opportunities, housing development and regeneration, (subject to relevant planning permissions being obtained), in addition to the strategic value of improving the use of the land in the town centre of Chatham. Officers are of the view that there is a compelling case in the public interest for making a compulsory purchase order (and interfering with the human rights of those affected by the Scheme).

7.5 The purpose for which the building is to be compulsorily acquired is likely to improve the economic well-being of the area by unlocking the site for development and regeneration as well as major improvement to the public realm at Chatham Town Centre.

7.6 There are permitted development rights in place to convert the building to residential use and an application in accordance with all relevant policy would be unlikely to face planning impediments. Further subject to confirmation of compulsory purchase powers, or acquisition of the building by agreement there are no remaining impediments to the Scheme proceeding.

7.7 The Council considers that there is no alternative other than to use its powers of compulsory acquisition powers to deliver the regeneration of the building albeit if continuing negotiations are successful which either secure the reuse

of the building or which enable the council to acquire it by agreement, there will be no need to use the powers.

8. Recommendations

8.1 The Cabinet is asked to delegate authority to the Director of Place and Deputy Chief Executive in consultation with the Leader and Portfolio Holder for Resources to:

- (a) Continue negotiations with the owners of the Debenhams building to acquire the property on mutually agreeable terms.
- (b) Commission a suitable partner or the Council's Capital Projects or / and Regeneration Team to develop a residential scheme for the former Debenhams building to the point of obtaining planning permission and the appointment of construction contractors.
- (c) Prepare a compulsory purchase order (CPO) for any or all of the remaining interests in the building pursuant to the Council's powers under the Acquisition of Land Act 1991 and S226(a) of the Town and Country Planning Act 1990.
- (d) Make the CPO to secure any or all interests required for the regeneration of the building.
- (e) Submit the CPO to the Secretary of State requesting the confirmation of the CPO.
- (f) Respond to objections and continue negotiations with the landowner(s) following making of the CPO.
- (g) Give undertakings and assurances if advised to and to acquire by agreement any outstanding interests.
- (h) Confirm the CPO as an unopposed Order if the CPO is returned to the Council for confirmation.
- (i) Instruct experts (including counsel) to represent the Council at an inquiry into the confirmation of the CPO or in any written representation process or process including a hearing.
- (j) Attend any inquiry into the CPO and to pay the costs of the planning inspectorate for the inquiry.
- (k) Advertise the confirmation of the CPO if it is confirmed by either the Council as an unopposed order or by the Secretary of State.
- (l) Serve notices to treat and enter, make vesting declarations and/or deed polls to secure all remaining interests in the site.

(m) Seek to resolve issues of compensation by agreement or in default of agreement by reference to the Lands Chamber of the Upper Tribunal and/or by mediation.

8.2 The Cabinet is asked to delegate authority to the Director of Place and Deputy Chief Executive, in consultation with the Leader and Portfolio Holder for Resources, to acquire any other interests necessary to secure the development of the building on the best terms reasonably obtainable.

8.3 The Cabinet is asked to delegate authority to the Director of Place and Deputy Chief Executive, in consultation with the Leader and Portfolio Holder for Resources, to take all steps to enter into any arrangements necessary for the disposal, letting and development of the former Debenhams building.

9. Suggested Reasons for Decisions

9.1 To secure the development of a strategic building which is integral to the centre of Chatham. To enable delivery of residential development within former Debenhams and to enhance the regeneration and economic vitality of Chatham.

Lead officer contact

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Appendices

Exempt appendix – Property Valuation Details

Background papers

None